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## LEGAL IMPLEMENTATION ON LAND BORDER MANAGEMENT BETWEEN INDONESIA AND PAPUA NEW GUINEA ACCRODING TO STEPHEN B. JONES THEORY

Dewa Gede Sudika Mangku

Facult of Law, Ganesha Singaraja Educational University, E-mail: dewamangku.undiksha@gmail.com

ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Border Management; Indonesia; Papua New Guinea</p> <p><b>How to cite:</b> Mangku, D. G. S. (2018). Legal Implementation On Land Border Management Between Indonesia and Papua New Guinea Accroding to Stephen B. Jones Theory. <i>Veteran Law Review</i>, 1(1), 72-86.</p>	<p><i>In the opinion of Stephen B. Jones the management of the border consists of (1) allocation, (2) delimitation, (3) the demarcation of boundaries in the field, and (4) boundary administration. The land border between Indonesia and Papua New Guinea has been arranged inside Memorandum of Understanding In Respect of The Land Boundary on The Island of Irian (New Guinea) and The Territorial Sea and Seabed Boundaries Immediately South of That Islands; Protocol about Report of Conference on Certain Seabed Boundaries Between Indonesia and Australia and Certain Seabed and Territorial Boundaries Between Indonesia and Papua New Guinea; Agreement between Indonesia and Australia concerning Certain Boundaries between Indonesia and Papua New Guinea; Memorandum of Understanding between The Government of The Republic of Indonesia and the Government of The Australia/Papua New Guinea concerning Administrative Border Arrangements; Agreement between the Government of Indonesia and the Government of Australia (Acting on Its own Behalf and on Behalf of the Government of Papua New Guinea) concerning Administrative Border Arrangements as to the Border between Papua New Guinea and Indonesia. This regulation is used as the basis for managing land borders between Indonesia and Papua New Guinea based on the opinion of Stephen B. Jones.</i></p> <p><i>Copyright @2018 VELREV. All rights reserved.</i></p>

### 1. Introduction

Indonesia is an archipelagic state situated geographically in the South East Asia with its ten immediate neighbors. Therefore, it has international land and maritime boundaries with the ten countries, i.e. Malaysia, Singapore, Vietnam, the Philippines, Palau, Papua New Guinea, Australia, Timor-Leste, India, and Thailand. Historically Indonesian land boundaries with its neighbors had been delimited during the Dutch colonialization. There are three neighboring countries have land borders with Indonesia, i.e.

Malaysia in Borneo (Kalimantan) island, Papua New Guinea (PNG) in New Guinea (Irian) island, and Timor-Leste in Timor island.<sup>1</sup>

Indonesian border with neighboring countries have a positive impact on the diplomatic relations although in border management in particular on the land borders never cause a problem or conflict with other countries, but always with the principles of good neighborliness it can be done well, The emergence of a problem at the border is very reasonable and often occur, but it can not be used as a reason to affect diplomatic relations that have been established properly and tightly between the countries bordering on land directly with Indonesia.<sup>2</sup>

Borders, boundaries, frontiers, and borderlands are human creations that are grounded in various ethical traditions. When Allen Buchanan and Margaret Moore compared natural and international law traditions with the Jewish, Christian, Confucian, Islamic, and Liberal ethical traditions of boundaries, although they found that the ethical traditions were somewhat ambiguous in terms of how to establish borders, including settlement, purchase, inheritance, and secession, all of these traditions agree that *conquest* is unjustifiable.<sup>3</sup> Nevertheless, the history of the Roman Empire is testimony to the fact that conquest was central to the differentiation between barbarism and civilization. Boundaries organized the Roman Empire according to a hierarchy of spaces – territories of varied dimensions and functions, which included settlements, cities, provinces, and regions.<sup>4</sup>

During the Middle Ages, there is some evidence that the feudal system was more concerned with the control of cities and territories, which, rather than having clear boundaries, had somewhat vague borderlands. Thanks to geographers, however, mapping technology allowed rulers to have a spatial view of their possessions; thus, what were originally borderland or border regions progressively became boundaries or frontiers. As well, the vocabularies of space began to reflect this evolution, refining meanings so as to differentiate between boundaries, borders, borderlands, and frontiers. Malcolm Anderson described how meanings varied according to place, noting, for instance, that “frontier” in the American and French traditions does not appeal to the same imagery.

In French, a “frontière” is a borderland or border region. The French Alsace region is such a border region or “Région frontalière.” In American English, however, a “frontier” is a moving zone of settlement, which refers to the American imagery as described by Frederick Turner in *The Frontier in American History*. Also, “frontière” did not appear in the *French Dictionary of*

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<sup>1</sup> Sutisna, S. & Handoyo, S. “the International Symposium on Land and River Boundaries Demarcation and Maintenance in Support of Borderland Development”. *Delineation And Demarcation Surveys Of The Land Border In Timor: Indonesian Perspective*, Center for Boundary Mapping The National Agency for Surveys and Mapping of Indonesia (Bakosurtanal): p. 1.

<sup>2</sup> Purwanto. H. & Mangku, D. G. S. “Legal Instruments of The Republic of Indonesia In Border Management Using The Perspective of archipelagic state”. *International Journal of Business, Economics and Law*, Vol. 11, Issue 4 (Dec.), p. 51.

<sup>3</sup> Buchanan, A. & Moore, M. (2003). *States, Nations and Borders: The Ethics of Making Boundaries*, Cambridge, UK: Cambridge University Press.

<sup>4</sup> Anderson, M. (1996). *Frontiers: Territory and State Formation in the Modern World* (Cambridge, UK: Polity Press), Introduction and Chapter 1.

*Geography* until 1783, at a time when French geographers were attempting to establish accurate physical boundary lines.<sup>5</sup>

The Indonesia-Papua New Guinea border region is divided into two types, namely the sea and land borders. The sea border is connected by the Pacific Ocean surrounding the Papua New Guinea region. In general, Indonesia is bordered by three countries at the same time, Papua New Guinea to the east and south, Australia to the south and the Republic of Palau to the north. The land borders of the two countries in a series of New Guinea islands. As part of the 1973 bilateral agreement regarding a Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Australia / Papua New Guinea regarding the Border Administrative Arrangement, 14 MM pillars have been established along the borders of Indonesia and Papua New Guinea. These points are at 141° East Longitude, from MM pillars to MM.

Furthermore, starting from the MM pillar to the MM pillar, it is located on the meridian of 141 ° 01 '10 ". The land boundary with Papua New Guinea runs from North to South as far as 780 Km located on the border / meridian monument (MM) in the Skouw and Wutung areas. The city of Jayapura arrived at MM in the Anggamarut / Wairin area of Boven Digoel Regency from MM in the Domonggi area of Merauke Regency to MM in the estuary area of the Bensbach river or Torasi river. In addition to the 14 MM pillars, between 1983 and 1991, according to Article 9 of the 1973 Agreement Indonesia with Papua New Guinea has established 38 MM Pillars, so that until now there have been 52 MM pillars along the border line. The addition of the 38 new MM pillars is currently still contained in the Joint declaration signed by the second survey and mapping authority. The number of pillars in the Papua border area is still very limited, the number of pillars of this boundary is certainly very inadequate k a border area that is often used as a hideout and illegal crossing by separatist groups of both countries.

The situation of the Indonesia-Papua New Guinea border region has its own reality in the survival of the lives of people around the border region. This is a dynamic situation in the area around the border, but on the other hand it can also cause interference or problems around the Indonesia-Papua New Guinea border area. Efforts to determine borders with neighboring countries can be done by means of border diplomacy. The complete and clear determination of territorial boundaries can minimize the possibility and intensity of border conflicts. If it is not done completely and clearly and there is no certainty, it will cause overlapping territorial recognition. Border diplomacy efforts are indeed not easy and can be done in a short time because it requires a long process.

The Indonesian government needs to conduct border areas with a non-traditional approach where bilateral cooperation between the Indonesian-Papua New Guinea government needs to emphasize community development and human security from all forms of violence, and must put forward more non-military issues, such as ethnic problems and welfare . The

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<sup>5</sup> Brunet-Jailly, E. The State of Borders and Borderlands Studies 2009: A Historical View and a View from the Journal of Borderlands Studies, [http://src-h.slav.hokudai.ac.jp/publicn/eurasia\\_border\\_review/no1/01\\_Brunet.pdf](http://src-h.slav.hokudai.ac.jp/publicn/eurasia_border_review/no1/01_Brunet.pdf)

security approach at the border must also be balanced with a welfare approach. Elements of local wisdom in relation to the use of natural resources (SDA) in the Border region must also be a concern, because it is the basis for planning the appropriate community development model, especially in the Indonesia-Papua New Guinea border area. Although in reality there are many differences between one region and another in the border region, but there are similar things in their economic activities, namely economic sub-systems.<sup>6</sup>

Management and defense issues in the border region are closely related to the basic conception of the state as an entity that has sovereignty, population and territory as well as interpretations or perceptions of threats faced, thus managing and defending border areas and concluded as all efforts to realize the existence of a country which is characterized by the protection of sovereignty, population and territory from various types of threats. The threat discourse in the border region has so far tended to be dominated by issues and problems in border areas, especially on land borders such as national borders, shifting border stakes, economic activities, illegal crossing and smuggling, and theft which is still a problem in the border area. Border problems have complex dimensions there are a number of crucial factors associated with them such as jurisdiction and state, political, social, economic and defense security sovereignty. In this paper we will discuss management of land borders between Indonesia and Papua New Guinea.

## 2. Method

Based on the features of legal research, Soekanto categorizes it into three types, namely:<sup>7</sup>

- a. Exploratory research is conducted if knowledge about a phenomenon that will be investigated is none or still lacking;
- b. Descriptive study is done to provide accurate data about people, circumstances, or other symptoms;
- c. Explanatory research is research that is intended to test specific hypotheses.

Viewing from the objectives, legal research is divided into two categories they are:<sup>8</sup>

- a. The literature research is done by researching library materials or secondary data.
- b. The empirical or sociological legal research is conducted primarily by examining primary data.

Based on the category of the types of research, this research employed descriptive design that is intended to provide a clear picture of a country's reasons to issue a travel warning to a state in the perspective of international

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<sup>6</sup> Fauzi, D. T. *Fenomena Masalah Lintas Batas Indonesia-Papua Nugini Dan Pengaruhnya Terhadap Hubungan Bilateral Indonesia-Papua Nugini*, tesis, <http://repository.unpas.ac.id/id/eprint/571>, p. 10

<sup>7</sup> Soekanto, S. (2012), *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia Press. p. 23

<sup>8</sup> Soekanto, S., & Mamudji, S. (2003), *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*, Jakarta: PT Rajagrafindo Persada. p. 14

law. The objective of the present research is normative law, of which the data were obtained through the study of documents or literature by examining library materials, such as: books, international conventions, international agreements, papers, journals, articles, newspapers as well as internet sites related to the object under study.

Research is a scientific activity that is related to the analysis and construction done methodically, systematically and consistently. Methodological means in accordance with a method or a certain way, systematic is based on a system, while consistent means the absence of contradictory things within a certain framework.<sup>9</sup> This research is descriptive research that provides the data as accurately as possible about *Legal Implementation on Land Border Management Between Indonesia and Papua New Guinea According to Stephen B. Jones Theory* and this research is a normative research is legal research done by researching library materials or secondary data. The data were analyzed qualitatively is this analysis want to find the truth based on the value or quality of data obtained through the process: collecting the data, the data were then grouped according to the object, the data that have been classified was then outlined and explained, and establish conclusions and ius constituendum.

### **3. Land Border Management Between Indonesia and Papua New Guinea**

#### **3.1 The Border History of Indonesia and Papua New Guinea**

The boundary separating Indonesia and Papua New Guinea lies close to the limit of Dutch annexations in the first half of the 19th century. Van der Veur (1966) published a useful account of the early history of this line. In 1828 the Dutch having made vague claims to New Guinea, on the strength of the jurisdiction of the Sultan of the Moluccas, decided to take direct action. An expedition was sent to the island and a small settlement was established at Triton Bay after the coast had been explored from Tandjung Jamursba to the Digul River. These actions were followed by the proclamation of Dutch territory on 24 August 1828.<sup>10</sup>

*"That part of New Guinea and its interior, beginning at the 141st meridian east of Greenwich on the south coast, and from there west-northwest and northward to the Cape of Good Hope [Tandjung Jamursba], situated on the north coast."<sup>11</sup>*

After Britain requested a clear statement of the extent of territory occupied by tribes subject to Dutch authority, a secret definition was made in 1848.

*"From Cape Saprop Maneh [Tanjung Djar] 140° 47' meridian east of Greenwich on the north coast, along that coast, the Bay of Wanammen*

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<sup>9</sup> Soekanto, S. (2012), *op. cit.*

<sup>10</sup> Prescott, V., & Triggs, G. D. *International Frontiers and Boundaries (Law, Politics and Geography)*, oninklijke Brill NV, Leiden, The Netherlands. Koninklijke Brill NV incorporates the imprints Brill, Hotei Publishers, IDC Publishers, Martinus Nijhoff Publishers and VSP, p. 377

<sup>11</sup> *Ibid.*

*[Teluk Sarera] to Cape Kain Kain Beba [Tanjung Jamursba] and further west, south and southeast to the, by Proclamation of 24 August 1828, provisionally adopted boundary at 141° E.L. on the south coast; including the interior, so far as this...will appear to belong to Netherlands territory.<sup>12</sup> “*

The secret declaration was made public in 1865 and then in 1875 the eastern boundary was described as a straight line from Tanjung Djar on the north coast to the intersection of meridian 141° east on the south coast. Thus the alignment of the present boundary was fixed fairly closely by a unilateral Dutch declaration before Britain and Germany acquired their respective colonies in the east of New Guinea. They both claimed colonies in 1884 and they were separated in April 1885 by a boundary consisting of straight lines from Mitre Rock on the east coast of New Guinea, 0.6 nm north of Cape Ward Hunt, that is at 8° 03' south latitude, to the intersection of meridian 141° east and parallel 5° south. The Anglo-Dutch negotiations commenced in 1893 after Britain had complained about raids of headhunters from Dutch territory east of Longitude 141° east.

Officials visited the coast and selected the mouth of the Bensbach River as the starting point. The mouth was located at 141° 01' 47.9' east, that meant Britain was conceding a strip of territory about 3 km wide to the Anglo-Dutch-German tri-junction. To offset this concession Britain suggested that the meridian should be intersected by a section of the Fly River that lay west of the meridian. This was recommended on the grounds that explorers and gold-seekers would use the Fly River as a route inland and it would be inconvenient if part of the route fell entirely within Dutch territory. This justification was accepted by the Dutch negotiators and the boundary was settled on 20 July 1895.<sup>13</sup>

Germany was in no hurry to settle the boundary with the Dutch north of parallel 5° south and it was 1910 before negotiations began. German surveyors believed that since the coastal terminus had been decided and the boundary was the meridian through that point there was no need to mark the boundary inland because white settlement was improbable. It is likely that German surveyors were working hard around the perimeters of Cameroun, Tanganyika and Southwest Africa in the first decade of the 20th century. When work did start the Dutch wanted a detailed survey of a wide strip to allow the selection of a natural boundary. The Germans argued successfully for the survey of a narrow strip within which a meridian could be selected. The surveys produced useful results but war intervened and by 1918 Australia was governing the former German colony.

Cook, Macartney and Stott (1968) have produced an excellent account of the evolution of this boundary after 1919. In 1928 A.G. Harrison, an Australian surveyor placed a marker on the north coast near Wutong on meridian 141° 0' 13.5" east, and recorded that the Dutch boundary lay 400 m to the west. In 1933 surveyors from both countries discovered there was a gap of 398 m between the Dutch and Australian determinations of the

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, p. 377

terminus. It was decided to split the difference but the selected point was unsuitable for the placement of a marker. Accordingly the marker was placed 168 m from the Dutch determination and 230 m from the Australian determination. In 1936 the two governments agreed the boundary should be the meridian through that marker.<sup>14</sup>

In 1960 the Australian and Dutch governments agreed that the boundary should be the great circle course passing through the obelisk on the north coast and the most northerly point where the great circle course intersected the Fly River. South of the river the boundary would be the meridian that passed through the mouth of the Bensbach River. A new determination of that mouth had been made in 1958 and produced a meridian  $141^{\circ} 01' 07''$  east. The two intersections of meridians on the Fly River were completed in 1962.

In 1964, after Indonesia succeeded the Netherlands in Papua, Australia and Indonesia had to agree on the boundary. It was decided that north of the Fly River the boundary would be  $141^{\circ}$  east and south of the river it would be meridian  $141^{\circ} 01' 10''$  east, that intersected the mouth of the Bensbach River. The boundary was demarcated in two years starting in 1966. Ten beacons were placed north of the Fly River and four marked the line south of the Fly River. The final agreement was signed on 26 January 1973. It is evident from large-scale maps of the area, where the straight boundaries intersect the Fly River, that the river contains many meanders that have sometimes have been cut off to form ox-bow lakes. It is possible that the Fly River will move and intersect the straight boundaries north or south of the two limiting monuments erected in the 1960s. However, there have not been any reports of such events creating serious problems.<sup>15</sup>

Maps of Indonesia and Papua New Guinea



(Source : <https://opinionator.blogs.nytimes.com>)

Papua's border areas have very large natural resources, namely in the form of forests, both conversion forests and protected forests and national parks that exist along the border. The condition of the forest stretching along the border is almost entirely untouched or exploited except for a few locations that have been developed as conversion forests. In addition to

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid*, p. 378

forest resources, this area also has considerable potential for water resources from rivers that flow along the border region. Likewise the content of minerals and metals that are in undeveloped soil such as copper, gold, and other types of metals with high economic value.

Border crossing activities around the Indonesia-Papua New Guinea border area are traditional border crossers such as those carried out by close relatives or relatives from Papua to the Papua New Guinea region and vice versa, while economic activities such as commodity trading between the two countries are through the boundary door. The existence of customary land or customary land in two regions of the country becomes a dynamic in the Indonesia-Papua New Guinea border region. This communal land is part of a livelihood field that is processed daily by border communities, so crossing borders between countries is a common thing to do every day.<sup>16</sup>

The development of cross-border trade can be seen from the increasing mobility of goods, services and human flows between the two regions. This development is also supported by the existence of border trans roads which facilitate accessibility between the City of Jayapura and the Indonesia-Papua New Guinea border area. Commodities traded include clothing, food, agricultural products, and others. But on the other hand, there are several obstacles such as the availability of limited service trade facilities, not available public transportation in border areas and management that is not optimal.<sup>17</sup>

The Indonesia-Papua New Guinea border area which is often used as a traditional border crossing by local people does not rule out the possibility of being exploited by irresponsible individuals to launch provocative actions on the local community. the Indonesia-Papua New Guinea border region is also prone to criminal acts such as smuggling, buying and selling weapons and ammunition, and is an area that can be used for foreign intelligence infiltration / exfiltration into Papua. From the aspect of well-being, the existence of a strong equality of adat and also the similarity in the level of welfare in the Indonesia-Papua New Guinea border region has become its own dynamic in the border regions of the two countries.

### **3.2 Land Border Management Between Indonesia and Papua New Guinea Is Based on Stephen B. Jones' Theory**

In the six celebrated English dictionaries – Webster's Unabridged Dictionary, Collins English Dictionary, the America Heritage Dictionary, Oxford Dictionary, the Merriam – Webster Unabridged Dictionary, and Macmilan Dictionary, there are quite similar definitions on the term "border", in brief, border is defined as :<sup>18</sup>

- a. "the line that separates one country, state, province. etc., from another";
- b. "the dividing line or frontier area separating political divisions or geographic regions";

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<sup>16</sup> Fauzi, D. T. *op. cit.*, p. 53

<sup>17</sup> *Ibid.*

<sup>18</sup> Guo, R. (2015), *Cross Border Management : Theory, Method, and Application*, London: Springer Berlin Heidelberg Dordrecht. p. 4



- c. "the line of frontier area separating political divisions or geographic regions";
- d. "a line separating two countries, administrative divisions, or other areas";
- e. "a line separating one country or state from another" or "a boundary between places";
- f. "the official line separating two country or states".

Obviously, "border" refer as to a *line* in all these definitions. However, "border" sometimes has been defined as a narrow strip (or district or region) along or near the border between two areas. In addition, it is also usually defined as the part or edge of a surface or area that forms its outer boundry or the edge or boundary of something. or band or pattern around the edge of something, or the part near it. In some unusual cases, "border" also refers as to 'the frontier of civilization'.

The boundaries of a country's territory occupy an important position seen from the geographical, legal, and political aspects. Geographically, the boundary of a region marks the area of a country which includes land, sea, and air above it. Legally, the national boundary determines the scope of the enactment of a country's national law, while politically the state's boundary is the end of the reach of the highest power of a country over the territory and everything in that region.<sup>19</sup>

Indonesia's border region is a region that has strategic value for Indonesia's national interests. The strategic value covers economic, political, defense and security aspects, which are fundamentally related to the survival of the nation and state of Indonesia. The border region has strategic value in supporting the success of national development. This is indicated by the characteristics of activities, among others: having an important impact on state sovereignty, is a driving factor for improving the socio-economic well-being of the surrounding community, having interrelated interplay with activities carried out in other regions bordering the region and between countries and having an impact on conditions of defense and security, both regional and national scale.

In the era of regional autonomy, where each region is required to be able to manage and be able to utilize existing resources independently, then the border area that has enormous potential can be used as an asset for regional development. In addition, this area will provide opportunities for increased production, which in turn will cause various multiplier effects on improving the welfare of the local community.<sup>20</sup> Through border areas,

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<sup>19</sup> Hanita, M. (2013). "*Strategi Pertahanan di Wilayah Perbatasan, Studi di Tiga Wilayah Perbatasan : Papua, Timor, dan Kalimantan,*" Jurnal Aplikasi Stratejik, hlm. 79. Lihat juga dalam Budi Hermawan Bangun, *Pemanfaatan Perjanjian Kerjasama Pengelolaan Perbatasan Negara Bagi Pemenuhan Hak Ekonomi Masyarakat (Studi Di Perbatasan Kalimantan Barat-Sarawak)*, Disertasi, Program Doktor Ilmu Hukum Fakultas Hukum Universitas Diponegoro, Semarang, p. 74

<sup>20</sup> Husnadi. (2004). *Menuju Model Pengembangan Kawasan Perbatasan Darat Antar Negara (Studi Kasus: Kecamatan Paloh dan Sajian Besar Kabupaten Sambas, Kalimantan Barat)*, Tesis pada Program Studi Magister Teknik Pembangunan Wilayah dan Kota, Universitas Diponegoro, Semarang. Lihat juga dalam Laporan Akhir Kajian Manajemen Wilayah Perbatasan Negara, *Pusat Kajian Administrasi Internasional, Lembaga Administrasi Negara*, p. 4-5.

interstate trade activities can be carried out easily, quickly, and cheaply which in turn will encourage increased production activities of the community, income of the community, and lead to the welfare of the community.

According to Ganewati Wuryandari in implementing border area management, it is necessary to pay attention to aspects of the culture of the community, the political influence of the people of the two countries, the policies of the state government and market forces in its trade. In the management of border areas there are two border management regimes between countries that are being developed by adjoining countries, namely the hard border regime, namely the border security regime that adheres to a very strict border system with the placement of fully armed forces at each border checkpoints. Countries that adhere to the hard border regime usually try to close their border meetings to prevent the entry and exit of border crossers for reasons of national security.<sup>21</sup>

In 1945, an American political geographer named Stephen B. Jones published a book entitled *Boundary-Making : A Handbook for Statesmen, Treaty Editors and Boundary Commissioners*. In his book, Jones formulates a theory concerning the existence of the historical borders of a state. Within the theory, Jones suggests that there are four main stages of the existence of the borders of a state, namely: (1) allocation, (2) delimitation, (3) the demarcation of boundaries in the field, and (4) boundary administration. Jones gave a cautionary note that the boundary making is a continuous process, starting from the initial stage to the final stage of the administrative allocation, so that errors in one stage will affect the next stage.<sup>22</sup>

After more than sixty years the theory of Jones (1945) published and applied, many questioned the relevance of the theory for the 21st century, especially associated with the borderless view, the development of geospatial technology and dispute resolution cases Eritrea - Ethiopia boundary. Then Donaldson and Williams (2008) conducted an analysis of the relevance of the theory of boundary making of Stephen B. Jones in 1945 for the 21st century. The results of the research that has been conducted is presented in the article entitled: *Delimitation and Demarcation: Analysing the Legacy of Stephen B Jones 's Boundary Making* and published in the journal *Geopolitics*, 13:4, 676-700. Donaldson and Williams conclude that the delimitation and demarcation stage is a fundamental stage in the boundary making, and practical is still used as a guideline in determining the boundary and resolving boundary disputes in various parts of the world. On the basis of the results of the analysis conducted by Donaldson and Williams in 2008, the boundary making theory proposed by Jones in 1945 and used as a framework of reference in this study.

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<sup>21</sup> Wuryandari, G. (2009). *Keamanan Di Perbatasan Indonesia – Timor Leste : Sumber Ancaman Dan Kebijakan Pengelolaannya*, Yogyakarta: P2P-LIPI & Pustaka Pelajar. p. 34.

<sup>22</sup> Sumaryo, J. S., Sutisna, S., & Wardaya, D. (2014 ). *Geospatial Information and Regional Boundary Dispute in the Regional Boundary Demarcation during the Regional Autonomy Era in Indonesia*, FIG Congress 2014 Engaging the Challenges - Enhancing the Relevance Kuala Lumpur, Malaysia.

International boundary making starts with the intention of two or more countries of boundary delimitation and/or demarcation. These terms are ruled by their function like *separating*, *developing* or *connecting* the different countries. The initial intention is usually identified by a treaty or agreement. International boundary making with regard to natural, geometric or artificial boundaries can be accomplished in two ways: The countries (states) of concern implement their boundaries themselves by setting the requirements and specifications in a treaty negotiated between them; and they control the output (boundary documents and maps) and its later use. The countries call upon the Secretary General of the United Nations to make arrangements to demarcate the boundaries between them.

The meaning of *treaty and international agreement* under Article 102 of the charter of the United Nations is defined as: "Treaty is a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons". The Vienna Convention (1969) defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."<sup>23</sup>

Treaties between two or more countries are political- juridical instruments enforcing delimitation and demarcation by an executor, taking into consideration the customary international law represented by the United Nations (UN) for accepting, binding and maintaining sovereignty rights over the territory of the concerned countries. Boundary delimitation requires to have external specifications which define the scope of work, technical specifications for each part of work in terms of description, physical properties, time covering the cycle of boundary making (surveying, construction, mapping), allowing the internal specifications to define the true needs of boundary administration for operation.<sup>24</sup>

*Delimitation* is the legal process by which two sovereign nations establish and describe in writing the location of their common boundary, mainly as the output of the decision making on the negotiation table. *Demarcation* is a field operation. Its purpose is to mark the position of the boundary on the ground so it is visible to all, and this normally starts by surveying which is the initial stage of demarcation. The objective of demarcation is to place or adopt physical marks that accurately represent the location of a delimited boundary. Wherever possible, demarcation by artificial boundary marks should consist of monuments placed directly on the boundary line.<sup>25</sup>

A joint commission, composed of an equal number of members from each country, normally undertakes the physical demarcation. Boundary demarcation is based on requirements with either static documentation

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<sup>23</sup> Akencia-Ospina, E. V. (2002). International Boundary Delimitation and Law of Treaties, presented at workshop held at IBRU University of Durham, UK, 8-10 July 2002, unpublished.

<sup>24</sup> Sayel, M. A., Lohmann, L., & Heipke, C. International Boundary Making - Three Case Studies, Leibniz Universität Hannover, Hannover: Institute of Photogrammetry and GeoInformation (IPI). p. 1

<sup>25</sup> *Ibid.*

(paper mapping and reports) as an output, which for securing knowledge or information about their boundaries, are to be attached to the treaties archived in the UN; or they are based on dynamic output (like data for Geographic Information Systems, GIS) to be used by future boundary administrations.<sup>26</sup>

*Delineation* is the graphical or mathematical representation of the boundary.<sup>27</sup> Frequently, a joint commission undertakes both demarcation and delineation. The commission's published results consist of reports, photographs and other illustrations, maps, and tables showing geographic positions of boundary monuments and survey control stations used for the entire period of field work. In this way delineation is the comprehensive description of the entire demarcation and mapping activities that is able to document the boundary for future reference.<sup>28</sup>

The juridical basis for establishing the Indonesia-Papua New Guinea border was initiated by the declaration of the Prussian King on May 22, 1885 concerning the border between Germany and the Netherlands and Germany and Britain in the Papua region. This declaration affirms the determination of the boundaries of the three powers between Germany and the Netherlands and Germany and Britain in the region. With this declaration, West Papua was ratified as belonging to the Netherlands and did not need to wait for recognition from anyone.

Then after that, there were several legal foundations, namely: Convention between the United Kingdom and the Netherlands on May 16, 1895 concerning the determination of the boundary line between Irian and Papua New Guinea, Accuracy of observations and traversing of field activities between Indonesia-Australia on August 4, 1964 the activity of 1966/1967, Agreement between the Government of Indonesia-Government of the Commonwealth of Australia concerning the establishment of certain seabed boundaries, which was signed in Canberra on 18 May 1971 and ratified by Presidential Decree No. 42 of 1971, Agreement between Indonesia-Australia concerning certain boundaries between Indonesia and Papua New Guinea signed in Jakarta on 12 February 1973.

Agreement between the Republic of Indonesia Government - the Australian Government (acting on its own behalf and on behalf of the government of Papua New Guinea) on administrative arrangements regarding the border between Indonesia-Papua New Guinea which was signed in Port Moresby on 13 November 1973 and passed by Presidential Decree No. 27 of 1974 was then replaced with a basic agreement between the Government of Indonesia and the Government of Papua New Guinea regarding border arrangements signed in Jakarta on December 17, 1979 which was passed by Presidential Decree No. 6 of 1980, then renewed in Port

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<sup>26</sup> Adler, R. (2002). "Surveyors Role in Delineation and Demarcation of International Land Boundaries". FIG XXII International Congress, Washington D.C. U.S.A., April 19-26 2002. [http://www.fig.net/pub/fig\\_2002/Js20/JS20\\_adler.pdf](http://www.fig.net/pub/fig_2002/Js20/JS20_adler.pdf), p. 56

<sup>27</sup> Sutisna, S. (2006). "Delineation and Demarcation Surveys of the land border in Timor, Indonesian Perspective", Presented at International Symposium on Land and River Boundaries, Demarcation and Maintenance of Border Development, Bangkok 6-11 Nov 2006. International Border Research Unit (IBRU) University of Durham UK, unpublished, p. 5

<sup>28</sup> *Ibid.*

Moresby on October 29, 1984, and was ratified by Presidential Decree No.66 of 1984, which was later renewed in Port Moresby on April 11, 1990 and approved by Presidential Decree No.39 of 1990.

The Indonesian and Australian agreements regarding the Indonesia-Papua New Guinea border region are as follows:

- a. Memorandum of Understanding In Respect of The Land Boundary on The Island of Irian (New Guinea) and The Territorial Sea and Seabed Boundaries Immediately South of That Islands.
- b. Protocol about Report of Conference on Certain Seabed Boundaries Between Indonesia and Australia and Certain Seabed and Territorial Boundaries Between Indonesia and Papua New Guinea.
- c. Agreement between Indonesia and Australia concerning Certain Boundaries between Indonesia and Papua New Guinea.
- d. Memorandum of Understanding between The Government of The Republic of Indonesia and the Government of The Australia/Papua New Guinea concerning Administrative Border Arrangements.
- e. Agreement between the Government of Indonesia and the Government of Australia (Acting on Its Own Behalf and on Behalf of the Government of Papua New Guinea) concerning Administrative Border Arrangements as to the Border between Papua New Guinea and Indonesia.

#### **4. Conclusion**

The Indonesia-Papua New Guinea Agreement did in fact involve Australia in agreements regarding the determination of boundaries between Indonesia-Papua New Guinea. This is inseparable because Papua New Guinea at that time did not have self-government and was economically and politically speaking, Papua New Guinea had an area of Australian influence. After Papua New Guinea gained its independence on 16 September 1975 from Australia, Indonesia and Papua New Guinea established diplomatic relations, after previously having established consular relations in 1973.

The Indonesian and Australian agreements regarding the Indonesia-Papua New Guinea border region are as follows : Memorandum of Understanding In Respect of The Land Boundary on The Island of Irian (New Guinea) and The Territorial Sea and Seabed Boundaries Immediately South of That Islands; Protocol about Report of Conference on Certain Seabed Boundaries Between Indonesia and Australia and Certain Seabed and Territorial Boundaries Between Indonesia and Papua New Guinea; Agreement between Indonesia and Australia concerning Certain Boundaries between Indonesia and Papua New Guinea; Memorandum of Understanding between The Government of The Republic of Indonesia and the Government of The Australia/Papua New Guinea concerning Administrative Border Arrangements; Agreement between the Government of Indonesia and the Government of Australia (Acting on Its Own Behalf and on Behalf of the Government of Papua New Guinea) concerning Administrative Border Arrangements as to the Border between Papua New Guinea and Indonesia.

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